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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,480	04/26/2001	Christoph Menzel	RXSD 1003-1	8158

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EXAMINER	
ARTHUR JEANGLAUDE, GERTRUDE	

ART UNIT	PAPER NUMBER
2144	

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/830,480	MENZEL ET AL.	
	Examiner	Art Unit	
	Gertrude Arthur-Jeanglaude	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 April 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-75* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *71-75* is/are allowed.

6)☒ Claim(s) *1-65* is/are rejected.

7)☒ Claim(s) *66-70* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *4/26/01* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/26/01*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 25 is objected to because of the following informalities: at the end of claim 25, a period is required to end the claim. Appropriate correction is required.

In claim 71, line 2, apparently the word **"an"** before "end station" second occurrence, should be deleted.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3-26, 28-38, are rejected under 35 U.S.C. 102(e) as being anticipated by Rho (U.S. Patent No 6,428,485).

As to claim 1, Rho disclose a method for conducting a hearing test using a computer program comprising establishing a communication channel (See abstract; See communication network col. 1, lines 13-20) wherein a communication channel is established between an end station (tested person) and a server in a communication network (See col. 3, lines 52-64). It discloses executing a first portion of the computer program at the server; and executing a second portion of the computer at the end station (See col. 3, lines 52-64).

As to claims 3, 23-25, 28, 36-38, Rho discloses the communication network comprises a network executing according a standard internet protocol (See col. 3, lines 52-64) wherein one would use a home computer or handheld computing platform or an internet enabled mobile phone for communication via modem.

As to claims 4, 29, Rho discloses the channel comprises a connection according to a standard transmission control protocol over a standard internet protocol wherein TCP/IP is known to support the network.

As to claims 5-7, 30, 32, Rho discloses the computer program as discussed (See col. 3, lines 40-67-col.4) wherein one would inherently include logic that represents a set of stimuli to a user at the end station, and accepts input from the user responsive to the stimuli (inputting personal information); controlling a sensor at the end station to sense environmental data at the end station during the test; and controlling a sensor at the end station to sense a set up at the end station during the test in order to maintain the hearing testing ability.

As to claim 8, Rho discloses the computer program as discussed wherein it discloses flowcharts as shown in Figs.1-3 that include test control, test data processing and test sound signal components which are distributed between the first and the second portions.

As to claim 9, Rho discloses a MODEM used as a component to deliver the second portion of the computer program to the end station from a resource coupled to the communication network (See col. 3, lines 58-64).

As to claim 10, Rho discloses the resource comprises memory at the server (See col. 4, lines 23-26).

As to claims 11-14, 31, 33-35, Rho discloses the test control component as shown in the flowchart figures as shown in Fig.1-3 and also discloses input from the user (S13; Fig.1) and test set up data and a graphical user interface (S11; Fig.1) in conjunction with the set of stimuli, prompting the user to provide the input.

As to claims 15-22, Rho discloses the hearing test comprises a hearing threshold level test; a masking threshold level test; a loudness matching test; a loudness growth in octave bands LGOB test and wherein one would inherently have a speech reception threshold and speech discrimination in noise and quiet test (See abstract; col. 6, lines 35-67-col. 7, lines 1-8).

As to claims 26, Rho discloses a method for conducting a hearing test using a computer program, comprising: linking a user end station to a server using a communication network; allocating test control and data processing resources between the user end station and the allocating test sound signal resources to the user end

station; generating a sound using the test sound signal resource; accepting and processing input using the test control and data processing resources; determining a status of a test according to a test protocol, and if the test is done, then storing a hearing profile for the user, and if the test is not done, then determining a next stimulus according to the test protocol using the test control resources, and returning to the step of generating a sound (See Figs. 1-3; col. 3, lines 52-64; col. 6, lines 15-67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rho (U.S. 6,428,485) in view of Scott et al. (U.S. Patent No. 6,760,324).

As to claim 2, 27, Rho discloses a communication network but fails to specifically disclose that the communication network comprising a packet switched network. In an analogous art, Scott et al. disclose a method, system and computer program product for providing voice over the internet communication wherein it discloses communication over packet switched networks (See abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system of Rho with that of Scott et al. by having a communication network comprising a packet switched network in order to update and send messages via the server.

Claims 39, 41-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rho (U.S. 6,428,485) in view of Hou (U.S. Patent No. 6,322,521).

As to claim 39, Rho discloses a method for conducting a hearing test using a computer program comprising establishing a communication channel (See abstract; See communication network col. 1, lines 13-20) wherein a communication channel is established between an end station (tested person) and a server in a communication network (See col. 3, lines 52-64). It discloses executing a first portion of the computer program at the server; and executing a second portion of the computer at the end station (See col. 3, lines 52-64). Rho fails to specifically disclose calibrating the sound processing resources. In an analogous art, Hou disclose a method and system for on-line hearing examination and correction wherein it discloses calibrating the testing system for hearing (See Fig. 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Rho and that of Hou by calibrating the testing system in order to simulate the hearing aid processing.

As to claim 41, Rho discloses the communication network comprises a network executing according a standard internet protocol (See col. 3, lines 52-64) wherein one would use a home computer or handheld computing platform or an internet enabled mobile phone for communication via modem.

As to claim 42, Rho discloses the channel comprises a connection according to a standard transmission control protocol over a standard internet protocol wherein TCP/IP is known to support the network.

As to claims 43-45, Rho discloses the computer program as discussed (See col. 3, lines 40-67-col.4) wherein one would inherently include logic that represents a set of stimuli to a user at the end station, and accepts input from the user responsive to the stimuli (inputting personal information); controlling a sensor at the end station to sense environmental data at the end station during the test; and controlling a sensor at the end station to sense a set up at the end station during the test in order to maintain the hearing testing ability.

As to claim 46, Rho discloses the computer program as discussed wherein it discloses flowcharts as shown in Figs.1-3 that include test control, test data processing and test sound signal components which are distributed between the first and the second portions.

As to claim 47, Rho discloses a MODEM used as a component to deliver the second portion of the computer program to the end station from a resource coupled to the communication network (See col. 3, lines 58-64).

As to claim 48, Rho discloses the resource comprises memory at the server (See col. 4, lines 23-26).

As to claims 49-52, Rho discloses the test control component as shown in the flowchart figures as shown in Fig.1-3 and also discloses input from the user (S13; Fig.1) and test set up data and a graphical user interface (S11; Fig.1) in conjunction with the set of stimuli, prompting the user to provide the input.

As to claims 53-60, Rho discloses the hearing test comprises a hearing threshold level test; a masking threshold level test; a loudness matching test; a loudness growth

in octave bands LGOB test and wherein one would inherently have a speech reception threshold and speech discrimination in noise and quiet test (See abstract; col. 6, lines 35-67-col. 7, lines 1-8).

As to claims 61-63, Rho discloses the communication network comprises a network executing according a standard internet protocol (See col. 3, lines 52-64) wherein one would use a home computer or handheld computing platform or an internet enabled mobile phone for communication via modem.

As to claims 64-65, Rho discloses all but fails to specifically disclose calibrating includes electronically determining an input transfer function and an output transfer function for the sound processing resources. In an analogous art, Hou discloses a method and system for on-line hearing examination and correction wherein it discloses some type of input and output transfer function for the sound processing resources (See Figs. 8-9; col. 4, lines 30-42).). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Rho and that of Hou by calibrating the testing system in order to simulate the hearing aid processing.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rho (U.S. 6,428,485) in view of Hou (US 6,322,521) and further in view of Scott et al. (U.S. Patent No. 6,760,324).

As to claim 40, Rho discloses a communication network but Rho and Hou fail to specifically disclose that the communication network comprising a packet switched network. In an analogous art, Scott et al. disclose a method, system and computer program product for providing voice over the internet communication wherein it

discloses communication over packet switched networks (See abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system of Rho with that of Scott et al. by having a communication network comprising a packet switched network in order to update and send messages via the server.

Allowable Subject Matter

Claims 66-70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to disclose the limitations of claim 66 wherein the sound processing resources have an electronic input adapted to receive analog voltage inputs representative of sound, and first and second electronic outputs adapted to supply analog voltages representative of sound, and wherein the calibrating includes: coupling a calibration device to the electronic input and the first and second electronic outputs of the sound processing resources; and using the calibration device to supply a test signal to the electronic input, and feeding back a processed signal output on one of the first and second electronic outputs to the electronic input.

Claims 71-75 are allowed. The prior art fails to disclose the limitations of claim 71. for calibrating sound processing resources on an end station using a program executed by the end station, comprising: a first input adapted to receive electronic inputs representative of sounds from a first output of the sound processing resources;

a second input adapted to receive electronic inputs representative of sounds from a second output of the sound processing resources; an output adapted to provide electronic outputs representative of sounds to a first input of the sound processing resources; and a switch to connect the test signal source to the output, and to connect one of the first and second inputs to the output in response to control signals.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gertrude Arthur-Jeanglaude whose telephone number is (571) 272-6954. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gertrude A. Jeanglaude

GERTRUDE A. JEANGLAUDE
PRIMARY EXAMINER

GAJ

GAJ

December 1, 2004